

## REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (*i.e.*, Claims 11-20) are respectfully requested in view of the foregoing amendments and the following remarks.

At the outset, it should be recalled that the present invention pertains to a closure for so-called “combipacks,” or combination packaging, as well as other types of containers, sealed with a foil material which includes a piercing edge arrangement. Such closure means known to the prior art, which are frequently referred to as “self-opening closures,” do not always function in a fully satisfactory manner. Typically, discs of such closure devices are not cleanly cut out from the paper foil or foil membrane of the container, but, on the contrary, are merely sleeves that simply “press out” a piece of foil from the paper foil or foil membrane. The remaining edge that is not pressed out, or removed, is generally frayed or is shredded into the newly-created passage in the container. Frequently, such “shreds” project below the opening of the container and into the container’s volume, which often results in a blockage of the path for air to be taken into the container from outside thereof, which is essential for properly pouring or emptying the contents from the container.

One explanation for why the cutting of the foil material of such container openings occurs in an imprecise and often “messy” manner is explained by the fact that the foil material to be cut yields to the pressure of the sleeve, which works to a some extent as a boring head, which, when forced downwardly, no longer acts on a plane of paper

foil, but on the foil material “bulged” downwardly. To date, solutions to the problems encountered have included “pre-weakening” the foil or composite material to be cut using either lasers or punches at desired perforation locations for such self-opening types of closures. This pre-weakening procedure is generally considered rather expensive and, in any event, often does not result in a “clean” cut opening of the container.

The present invention, as claimed, overcomes the foregoing drawbacks of the prior art, as summarized above and as more extensively discussed in Applicant’s *Specification*, by providing a pouring out closure with a piercing edge arrangement for combipacks, or other types of containers, sealed with a foil material, which includes a flange for welding onto a combipack or to a foil material of a container sealed with the foil material, and a combined lid and pouring nozzle that is rotatable horizontally on the flange. The flange is provided with a projecting rim projecting upwardly and that is circular. The projecting rim of the flange further includes means for clipping the combined lid and pouring nozzle onto the projecting rim, so that the combined lid and pouring nozzle is held on the projecting rim, but is rotatable around an axis of the projecting rim, to form a piercing edge arrangement.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient pouring spout closure with a piercing edge cutting arrangement for composite packaging or containers sealed with a foil material, which includes a flange for welding onto a combipack or to a foil material of a container, and a combined lid and pouring nozzle that is rotatable horizontally on the flange for cleaning cutting an opening

in such foil material, either disclosed or suggested.

By the present amendments, Applicant has amended Claims 11, 12, 15 and 17-20 to address the Examiner's 35 U.S.C. §112, second paragraph, indefiniteness rejection of Claims 12-16 of the first Office Action, and to generally provide the claims with consistent terminology and a proper antecedent basis for all claim elements. Specifically, dependent Claims 12 and 15 have been amended to delete the phrase "the same" and to properly recite the intended structure so that the scope of these claims is clearly understandable.

Independent Claim 11 and various dependent claims have been amended solely as to form. None of the claim amendments entered at this time are intended to alter the original scope of the claimed invention, which, as explained below, Applicant submits to be patentably distinguishable over the prior art.

In view of the foregoing claim amendments, Applicant respectfully contends that the Examiner's 35 U.S.C. §112, second paragraph, indefiniteness rejection of the first Office Action has been overcome and should now be withdrawn.

Turning now, in detail, to an analysis of the Examiner's prior art rejection of Applicant's claims, in the first Office Action the Examiner had rejected Claims 11-20 as being obvious, pursuant to 35 U.S.C. §103(a), over Bomer *et al.*, P.C.T. Application Publication No. WO 98/33714, taken in view of Schellenberg *et al.*, P.C.T. Application Publication No. WO 02/40360. It is the Examiner's contention that Bomer *et al.* dis-

closes a pouring out closure with a piercing edge arrangement for a combipack sealed with a foil material comprising a rotatable combined lid and a pouring nozzle. The Examiner has acknowledged that Bomer *et al.* does not teach that the pouring out closure is separately mounted on a projecting rim projecting upwardly and includes means for clipping the pouring out closure. Schellenberg *et al.* has been secondarily-applied by the Examiner for its contended teaching of the feature that the Examiner concedes is omitted from Bomer *et al.*, namely, a pouring out closure separately mounted on a projecting rim projecting upwardly and including means for clipping the pouring out closure. The Examiner has therefore concluded that it would have been obvious to the skilled artisan to have modified Bomer *et al.* with the pouring out closure separately mounted on a projecting rim projecting upwardly and including the clipping means, as taught by Schellenberg *et al.*, to arrive at that which is now claimed by the instant Applicant.

In reply to the Examiner's obviousness rejection applying Bomer *et al.*, taken in view of Schellenberg *et al.*, the primarily-applied citation of Bomer *et al.* discloses a flap shutter. The "swiveling up" of the pour spout leads to a "swiveling down" of its rear part, as this latter part tears open the foil beneath the closure discussed therein. There is submitted to be no disclosure or suggestion in Bomer *et al.* which would be equivalent to a horizontal rotation, as claimed by the present Applicant, for cutting open a foil material. In contrast to that taught by Bomer *et al.*, the presently claimed invention cuts open a foil material along a circular cut, which is distinctly different from that evidenced by Bomer *et al.*

With respect to the secondarily-applied reference of Schellenberg *et al.*, this citation discloses a flap shutter, which does not comprise a foil cutter and which is not rotatable in any manner. A flat piece, which does pertain to the closure, must be torn out by hand and for which “pre-weakened” areas (19) are provided.

Upon combining the teachings and suggestions of Bomer *et al.* and Schellenberg *et al.*, there is no disclosure or hint of a combined lid and pouring nozzle that is “rotatable horizontally” on a flange of a combipack or of a foil material of a container sealed with the foil material for opening such a container.

In view of the foregoing, it is respectfully submitted that the Examiner’s 35 U.S.C. §103(a) obviousness rejection of the first Office Action, which applies Bomer *et al.*, taken in view of Schellenberg *et al.*, should be appropriately withdrawn.

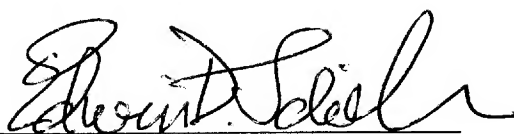
Concerning, finally, the remaining references cited by the Examiner, but not applied in any rejection of Applicant’s claims, such additional references has been carefully considered, but is not deemed to adversely affect the patentability of the present invention, as now claimed.

In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (*i.e.*, Claims 11-20) recite a novel and efficient pouring spout closure with a piercing edge cutting arrangement for composite packaging or containers sealed with a foil material, which includes a flange for welding onto a combipack or to a foil material of a container, and a combined lid and pouring nozzle that

is rotatable horizontally on the flange for cleaning cutting an opening in such foil material, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejection and the allowance of all claims now pending are respectfully requested and earnestly solicited.

Respectfully submitted,

MARIO WEIST

By   
Edwin D. Schindler  
*Attorney for Applicant*  
Reg. No. 31,459

**PTO Customer No. 60333**

Five Hirsch Avenue  
P. O. Box 966  
Coram, New York 11727-0966

(631)474-5373

September 2, 2008

The Commissioner for Patents is hereby authorized to charge the Deposit Account of Applicant's Attorney (*Account No. 19-0450*) for any fees or costs pertaining to the prosecution of the above-identified patent application, but which have not otherwise been provided for.